

AMENDED IN SENATE JULY 6, 2005

AMENDED IN SENATE JUNE 23, 2005

AMENDED IN ASSEMBLY APRIL 18, 2005

CALIFORNIA LEGISLATURE—2005—06 REGULAR SESSION

## **ASSEMBLY BILL**

**No. 409**

**Introduced by Assembly Member Yee**

February 15, 2005

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An act to amend Section 14838 of the Government Code, relating to state contracts.

### LEGISLATIVE COUNSEL'S DIGEST

AB 409, as amended, Yee. State contracts: small business bidding preference.

Existing law requires state agencies to give small businesses or microbusinesses a 5% preference in contracts for construction, the provision of information technology, the procurement of goods, or the delivery of services, and to establish a subcontracting participation goal for small businesses on contracts with a preference for those bidders who meet the goal.

This bill would ~~additionally require state agencies to give a 10% business preference in those contracts to nonprofit corporations, would establish a 10% subcontracting participation goal for those corporations, as specified, and would increase the maximum percentage of the bidding preference afforded by state agencies to small businesses and microbusinesses and the subcontracting participation goal to 10%.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 14838 of the Government Code is  
2     amended to read:

3     14838. In order to facilitate the participation of small  
4     business, including microbusiness, in the provision of goods,  
5     information technology, and services to the state, and in the  
6     construction (including alteration, demolition, repair, or  
7     improvement) of state facilities, the directors of General Services  
8     and other state agencies that enter those contracts, each within  
9     their respective areas of responsibility, shall do all of the  
10    following:

11    (a) Establish goals, consistent with those established by the  
12    Office of Small Business Certification and Resources, for the  
13    extent of participation of small businesses, including  
14    microbusinesses, in the provision of goods, information  
15    technology, and services to the state, and in the construction of  
16    state facilities.

17    (b) Provide for small business preference, or nonsmall  
18    business preference for bidders that provide for small business  
19    and microbusiness subcontractor participation, in the award of  
20    contracts for goods, information technology, services, and  
21    construction, as follows:

22    (1) In solicitations where an award is to be made to the lowest  
23    responsible bidder meeting specifications, the preference to small  
24    business and microbusiness shall be ~~5~~ 10 percent of the lowest  
25    responsible bidder meeting specifications. The preference to  
26    nonsmall business bidders that provide for small business or  
27    microbusiness subcontractor participation shall be, up to a  
28    maximum of ~~5~~ 10 percent of the lowest responsible bidder  
29    meeting specifications, determined according to rules and  
30    regulations established by the Department of General Services.

31    (2) In solicitations where an award is to be made to the highest  
32    scored bidder based on evaluation factors in addition to price, the  
33    preference to small business or microbusiness shall be ~~5~~ 10  
34    percent of the highest responsible bidder's total score. The  
35    preference to nonsmall business bidders that provide for small  
36    business or microbusiness subcontractor participation shall be up  
37    to a maximum ~~5~~ 10 percent of the highest responsible bidder's

1 total score, determined according to rules and regulations  
2 established by the Department of General Services.

3 (3) The preferences under paragraphs (1) and (2) may not be  
4 awarded to a noncompliant bidder and may not be used to  
5 achieve any applicable minimum requirements.

6 (4) The preference under paragraph (1) may not exceed fifty  
7 thousand dollars (\$50,000) for any bid, and the combined cost of  
8 preferences granted pursuant to paragraph (1) and any other  
9 provision of law may not exceed one hundred thousand dollars  
10 (\$100,000). In bids in which the state has reserved the right to  
11 make multiple awards, this fifty thousand dollar (\$50,000)  
12 maximum preference cost shall be applied, to the extent possible,  
13 so as to maximize the dollar participation of small businesses,  
14 including microbusiness, in the contract award.

15 (c) Give special consideration to small businesses and  
16 microbusinesses by both:

17 (1) Reducing the experience required.

18 (2) Reducing the level of inventory normally required.

19 (d) Give special assistance to small businesses and  
20 microbusinesses in the preparation and submission of the  
21 information requested in Section 14310.

22 (e) Under the authorization granted in Section 10163 of the  
23 Public Contract Code, make awards, whenever feasible, to small  
24 business and microbusiness bidders for each project bid upon  
25 within their prequalification rating. This may be accomplished by  
26 dividing major projects into subprojects so as to allow a small  
27 business or microbusiness contractor to qualify to bid on these  
28 subprojects.

29 (f) Small business and microbusiness bidders qualified in  
30 accordance with the provisions of this chapter shall have  
31 precedence over nonsmall business bidders in that the application  
32 of any bidder preference for which nonsmall business bidders  
33 may be eligible under this provision or any other provision of law  
34 shall not result in the denial of the award to a small business or  
35 microbusiness bidder. In the event of a precise tie between the  
36 low responsible bid of a bidder meeting specifications of a small  
37 business or microbusiness, and the low responsible bid of a  
38 bidder meeting the specifications of a disabled veteran-owned  
39 small business or microbusiness, the contract shall be awarded to  
40 the disabled veteran-owned small business or microbusiness.

1 This provision applies if the small business or microbusiness  
2 bidder is the lowest responsible bidder, as well as if the small  
3 business or microbusiness bidder is eligible for award as the  
4 result of application of the small business and microbusiness  
5 bidder preference granted by subdivision (b).

6 ~~SECTION 1. Section 14838 of the Government Code is~~  
7 ~~amended to read:~~

8 ~~14838. In order to facilitate the participation of small~~  
9 ~~business, including microbusiness and nonprofit corporations, in~~  
10 ~~the provision of goods, information technology, and services to~~  
11 ~~the state, and in the construction (including alteration,~~  
12 ~~demolition, repair, or improvement) of state facilities, the~~  
13 ~~directors of General Services and other state agencies that enter~~  
14 ~~those contracts, each within their respective areas of~~  
15 ~~responsibility, shall do all of the following:~~

16 ~~(a) Establish goals, consistent with those established by the~~  
17 ~~Office of Small Business Certification and Resources, for the~~  
18 ~~extent of participation of small businesses, including~~  
19 ~~microbusinesses and nonprofit corporations, in the provision of~~  
20 ~~goods, information technology, and services to the state, and in~~  
21 ~~the construction of state facilities.~~

22 ~~(b) Provide for small business preference, or nonsmall~~  
23 ~~business preference for bidders that provide for small business,~~  
24 ~~microbusiness, and nonprofit corporation subcontractor~~  
25 ~~participation, in the award of contracts for goods, information~~  
26 ~~technology, services, and construction, as follows:~~

27 ~~(1) In solicitations where an award is to be made to the lowest~~  
28 ~~responsible bidder meeting specifications, the preference to small~~  
29 ~~business, microbusiness, and nonprofit corporations shall be 10~~  
30 ~~percent of the lowest responsible bidder meeting specifications.~~  
31 ~~The preference to nonsmall business bidders that provide for~~  
32 ~~small business, microbusiness, or nonprofit corporation~~  
33 ~~subcontractor participation shall be, up to a maximum of 10~~  
34 ~~percent of the lowest responsible bidder meeting specifications,~~  
35 ~~determined according to rules and regulations established by the~~  
36 ~~Department of General Services.~~

37 ~~(2) In solicitations where an award is to be made to the highest~~  
38 ~~scored bidder based on evaluation factors in addition to price, the~~  
39 ~~preference to small business, microbusiness, or nonprofit~~  
40 ~~corporations shall be 10 percent of the highest responsible~~

bidder's total score. The preference to nonsmall business bidders that provide for small business, microbusiness, or nonprofit corporation subcontractor participation shall be up to a maximum 10 percent of the highest responsible bidder's total score, determined according to rules and regulations established by the Department of General Services.

(3) The preferences under paragraphs (1) and (2) may not be awarded to a noncompliant bidder and may not be used to achieve any applicable minimum requirements.

(4) The preference under paragraph (1) may not exceed fifty thousand dollars (\$50,000) for any bid, and the combined cost of preferences granted pursuant to paragraph (1) and any other provision of law may not exceed one hundred thousand dollars (\$100,000). In bids in which the state has reserved the right to make multiple awards, this fifty thousand dollar (\$50,000) maximum preference cost shall be applied, to the extent possible, so as to maximize the dollar participation of small businesses, including microbusiness and nonprofit corporations, in the contract award.

(e) Give special consideration to small businesses, microbusinesses, and nonprofit corporations by both:

(1) Reducing the experience required.

(2) Reducing the level of inventory normally required.

(d) Give special assistance to small businesses, microbusinesses, and nonprofit corporations in the preparation and submission of the information requested in Section 14310.

(e) Under the authorization granted in Section 10163 of the Public Contract Code, make awards, whenever feasible, to small business, microbusiness, and nonprofit corporation bidders for each project bid upon within their prequalification rating. This may be accomplished by dividing major projects into subprojects so as to allow a small business, microbusiness, or nonprofit corporation contractor to qualify to bid on these subprojects.

(f) Small business, microbusiness, and nonprofit corporation bidders qualified in accordance with the provisions of this chapter shall have precedence over nonsmall business bidders in that the application of any bidder preference for which nonsmall business bidders may be eligible under this provision or any other provision of law shall not result in the denial of the award to a small business, microbusiness, or nonprofit corporation

1 bidder. In the event of a precise tie between the low responsible  
2 bid of a bidder meeting specifications of a small business,  
3 microbusiness, or nonprofit corporation, and the low responsible  
4 bid of a bidder meeting the specifications of a disabled  
5 veteran-owned small business or microbusiness, the contract  
6 shall be awarded to the disabled veteran-owned small business or  
7 microbusiness. This provision applies if the small business,  
8 microbusiness, or nonprofit corporation bidder is the lowest  
9 responsible bidder, as well as if the small business,  
10 microbusiness, or nonprofit corporation bidder is eligible for  
11 award as the result of application of the small business,  
12 microbusiness, and nonprofit corporation bidder preference  
13 granted by subdivision (b).